

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, <i>ex. rel.</i> , CHRIS)	CAUSE NO. 1:09-CV-1506 SEB-TAB
NAYLOR, INDIANA SECURITIES)	
COMMISSIONER,)	
)	
Plaintiff,)	
)	
v.)	
)	
INDIANA STATE TEACHERS)	
ASSOCIATION, ISTA INSURANCE)	
TRUST, ISTA FINANCIAL SERVICES)	
CORPORATION, ISTA WELFARE)	
BENEFITS TRUST, ISTA)	
ADMINISTRATIVE SERVICES)	
CORPORATION, and NATIONAL)	
EDUCATION ASSOCIATION,)	
)	
Defendants.)	

CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff: State of Indiana, *ex rel.* Chris Naylor, Indiana Securities Commissioner.

Defendants: Indiana State Teachers Association, ISTA Insurance Trust, ISTA Financial Services Corporation, ISTA Welfare Benefits Trust, ISTA Administrative Services Corporation, and National Education Association.

Intervenors: Dennis Dittrick, Cheryl Lakes, and Shirley O'Neil.

B. For Plaintiff:

Alan Brown
Thomas E. Satrom
Joel Tragesser
Frost Brown Todd LLC
201 N. Illinois St., Suite 1900
P.O. Box 44961
Indianapolis, IN 46244-0961
317-237-3800
Fax: 317-237-3900
abrown@fbtlaw.com
tsatrom@fbtlaw.com
jtragesser@fbtlaw.com

For Defendants:

Andrew W. Hull
Alice M. Morical
HOOVER HULL LLP
111 Monument Circle, Suite 4400
Indianapolis, IN 46244-0989
317-822-4400
Fax: 317-822-0234
awhull@hooverhull.com
amorical@hooverhull.com

Jeremiah A. Collins
John M. West
Douglas L. Greenfield
Abigail V. Carter
Daniel A. Zibel
BREDHOFF & KAISER P.L.L.C.
805 Fifteenth St., N.W., Suite 1000
Washington, D.C. 20005
202-842-2600
Fax: 202-842-1888
jcollins@bredhoff.com
jwest@bredhoff.com
dgreenfield@bredhoff.com
acarter@bredhoff.com
dzibel@bredhoff.com

For Intervenor:

Irwin B. Levin
Richard E. Shevitz
Arend J. Abel
Eric S. Pavlack
COHEN & MALAD LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
317-636-6481
Fax: 317-636-2593
ilevin@cohenandmalad.com
rshevitz@cohenandmalad.com
aabel@cohenandmalad.com
epavlack@cohenandmalad.co

Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Synopsis of Case

A. Plaintiff alleges that the defendants violated Indiana securities laws through their offer and sale of an unregistered security to Indiana school districts. Plaintiff seeks to determine what funds remain in the Trust, to determine the disposition of unaccounted funds, to trace the location of all funds entrusted to defendants by Indiana school districts and to identify all appropriate resources to effect full restitution.

B. Defendants dispute that the health-care arrangements provided by defendant I.S.T.A. Insurance Trust to certain Indiana school corporations constitute "securities" under Indiana law. Moreover, even if the Commissioner were correct that the Insurance Trust was selling "securities" to Indiana school corporations, Defendants did not commit the violations as alleged, and there is no basis for the remedies sought in the complaint.

C. Intervenor: Intervenor Dennis Dittrick, Cheryl Lakes, and Shirley O'Neil are disabled former Indiana public school teachers who are currently receiving long-term disability (LTD) benefits through the ISTA Trust. Due to the ISTA Trust's lack of funds, ISTA and the NEA have been providing money to the ISTA Trust to enable it to continue making these LTD benefits payments on a monthly basis. The Intervenor sought and were granted the right to intervene in this action because the relief sought by the Securities Commissioner against ISTA--in particular a receivership over ISTA--could potentially jeopardize the Intervenor's ongoing receipt of their monthly LTD benefits payments.

III. Pretrial Pleadings and Disclosures

A. On April 28, 2010, the Court issued its order on the plaintiff's motion for appointment of a receiver/conservator and for an accounting and defendants' motion to dismiss. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before June 28, 2010.

B. Plaintiff(s) shall file preliminary witness and exhibit lists on or before June 28, 2010.

C. Defendant(s) shall file preliminary witness and exhibit lists on or before July 28, 2010.

D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before August 28, 2010.

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E. Plaintiff shall serve Defendants (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before June 11, 2010. Defendants shall serve on the Plaintiff (but not file with the Court) a response thereto within 30 days after receipt of the demand.

F. Plaintiff(s) shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) on or before October 28, 2010. However, if Plaintiff uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 60 days prior to the summary judgment deadline.

G. Defendants shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) within 30 days after Plaintiff serves its expert witness disclosure; or if none, Defendants shall make its expert disclosure on or before November 28, 2010. However, if Defendant uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 30 days prior to the summary judgment deadline.

H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than June 28, 2011. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56.1.

I. All parties shall file and serve their final witness and exhibit lists on or before April 28, 2011.

J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.

K. The parties have discussed preservation and disclosure of electronically stored discovery information, including a timetable for making the materials available to the opposing party. With the exception of electronic discovery production protocols, which are to be addressed in a proposed protective order (see section IV(C) below), issues unique to ESI are addressed hereunder, while issues applicable to discovery in general are addressed in section IV(C) below.

Plaintiff agrees to preserve and maintain all documents, including notes, transcripts, tapes, etc., that are electronically stored or otherwise in their possession or control that relate to Defendants.

Defendants likewise agree to preserve and maintain all documents, including notes, transcripts, tapes, etc., that are electronically stored or otherwise in their possession or control that relate to Plaintiff's claims. This specifically includes, but is not limited to the images of the two data servers, two exchange servers, and the various desktops, laptops and other devices that were taken in late May 2009.

The parties agree that no later than July 1, 2010, Plaintiff shall provide Defendants a proposed list of custodians and search terms designed to return relevant documents without imposing an unreasonable burden and/or cost upon Defendants. Should the parties not be able to agree upon the list of custodians and search terms within 20 days of delivery to Defendants, the parties agree to submit the matter to the Magistrate Judge for resolution. Consistent with the applicable Federal Rules of Civil Procedure, Defendants will review the universe of documents returned by application of the applicable custodian and search term limitations and produce non-privileged or otherwise non-protected documents that are responsive to properly propounded requests for production of documents under Federal Rule of Civil Procedure 34 and are relevant to any party's claim or defense.

Based on Plaintiff's representation that they do not have significant amounts of electronic information that would be responsive and non-protected, the parties do not believe it is necessary to negotiate search terms for the purpose of narrowing the universe of electronic documents Plaintiff must review in responding to Defendants' anticipated discovery requests. Disputes regarding Plaintiff's obligation to produce documents in response to requests for production of documents by Defendants will be handled in accordance with the applicable Federal Rule(s) of Civil Procedure.

At this point, the parties anticipate that each side will bear its own costs associated with responding to reasonable and not unduly burdensome discovery requests.

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IV. Discovery¹ and Dispositive Motions

Due to the time and expense involved in conducting expert witness depositions and other discovery, as well as preparing and resolving dispositive motions, the Court requires counsel to use the CMP as an opportunity to seriously explore whether this case is appropriate for such motions (including specifically motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue. To this end, counsel must select the track set forth below that they believe best suits this case. If the parties are unable to agree on a track, the parties must: (1) state this fact in the CMP where indicated below; (2) indicate which track each counsel believes is most appropriate; and (3) provide a brief statement supporting the reasons for the track each counsel believes is most appropriate. If the parties are unable to agree on a track, the Court will pick the track it finds most appropriate, based upon the contents of the CMP or, if necessary, after receiving additional input at an initial pretrial conference.

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? If yes, the party(ies) that expect to file such a motion must provide a brief statement of the factual and/or legal basis for such a motion. [Note: A statement such as, "Defendant will seek summary judgment because no material facts are in dispute," is insufficient. Such a statement does not indicate to the Court that the parties used the CMP as an opportunity to seriously explore whether this case is appropriate for summary judgment or other dispositive motion. However, the failure to set forth a basis for a dispositive motion in the CMP will not bar a party from raising this argument at the motions stage.]

Plaintiff intends to file for summary judgment on the issue of liability as the undisputed facts will establish that the health arrangement product offered and sold by the defendants constituted a security under Indiana law, that it was unregistered and not exempt from registration, and that the persons and entities involved in the offer and sale did so in violation of the Indiana securities laws.

¹The term "completed," as used in Section IV.B, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

Defendants intend to file for summary judgment arguing, among other things, that the health-care arrangements provided by the Defendant I.S.T.A. Insurance Trust are not "securities" under Indiana law.

B. Select the track that best suits this case:

_____ Track 1: No dispositive motions are anticipated. All discovery shall be completed by _____ [no later than 16 months from Anchor Date]. [Note: Given that no dispositive motions are anticipated, the parties should consider accelerating discovery and other pretrial deadlines to the extent practicable and suggest a trial date (Section VI) substantially earlier than the presumptive trial date of 18 months from the Anchor Date. The Court encourages a track faster than the standard track in all cases in which dispositive motions are not anticipated].

_____ Track 2: Dispositive motions are expected and shall be filed by _____ [no later than 11 months from Anchor Date]; non-expert witness discovery and discovery relating to liability issues shall be completed by _____ [no later than 7-10 months from Anchor Date]; expert witness discovery and discovery relating to damages shall be completed by _____ [no later than 12-16 months from Anchor Date]. [Note: The Court expects this will be the typical track when dispositive motions are anticipated.]

_____ Track 3: Dispositive motions are expected and shall be filed no later than November 9, 2010 [no later than 11 months from Anchor Date]; expert witness discovery that may be necessary at the dispositive motions stage shall be completed by October 9, 2010 [no later than 7-10 months from Anchor Date]; all remaining discovery shall be completed by March 9, 2011. [Note: The Court expects that this will not be the typical track when dispositive motions are anticipated.]

XXXX Track 4: Dispositive motions shall be filed by March 28, 2011; non-expert discovery shall be completed by December 30, 2010; expert witness discovery shall be completed by February 28, 2011.

C. Discovery Schedule

The parties agree that they will submit to the Magistrate Judge a proposed protective order for approval on or before June 1, 2010 assuming they are able to reach agreement on the terms of such an Order. If the parties are not able to reach agreement on the terms of a proposed protected order by such date, the parties will submit for the Magistrate Judge's consideration a document reflecting the areas of agreement and disagreement between parties on or before June 1, 2010. This protective order will address the designation, use, and destruction of confidential and/or attorney's eyes only materials, the inadvertent production of privileged or protected materials, and electronic discovery protocols.

In light of the parties' continuing efforts to resolve this matter prior to the commencement of discovery, and consistent with the discussion with the Magistrate Judge on April 30, 2010, discovery shall commence on June 1, 2010, with the exception of subpoenas *duces tecum* to third parties, which may be served upon entry of this Case Management Plan.

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V. Pre-Trial/Settlement Conferences

A pre-trial conference was held on April 30, 2010. The parties anticipate that additional settlement conferences may be warranted.

VI. Trial Date

The presumptive trial date is 18 months from the Anchor Date. The parties request a trial date in August of 2011. The trial is by the Court and is anticipated to take 8 days. Counsel should indicate here the reasons that a shorter or longer track is appropriate. While all dates herein must be initially scheduled to match the presumptive trial date, if the Court agrees that a different track is appropriate, the case management order approving the CMP plan will indicate the number of months by which all or certain deadlines will be extended to match the track approved by the Court.

VII. Referral to Magistrate Judge

At this time, all parties do not consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for all further proceedings including trial. [Indicating the parties' consent in this paragraph may result in this matter being referred to the Magistrate Judge for all further proceedings, including trial. It is not necessary to file a separate consent.]

VIII. Required Pre-Trial Preparation

A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.

3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
 - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
 - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.

3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

/s/ Alan S. Brown

Alan S. Brown, #3536-49
Thomas E. Satrom, #20745-49
Joel E. Tragesser, #21414-29
FROST BROWN TODD LLC

Attorneys for Plaintiff

/s/ Abigail V. Carter(with permission)

Jeremiah A. Collins, PHV
John M. West, PHV
Douglas L. Greenfield, PHV
Abigail V. Carter, PHV
Daniel A. Zibel, PHV
BREDHOFF & KAISER P.L.L.C.

Attorneys for Defendants

/s/Andrew W. Hull(with permission)

Andrew W. Hull, #11218-49
Alice M. Morical, #18418-49
HOOVER HULL LLP

Attorneys for Defendants

/s/ Eric S. Pavlack(with permission)

Irwin B. Levin, #8786-49
Richard E. Shevitz, #12007-49
Arend J. Abel, #10763-49
Eric S. Pavlack, #21773-49
COHEN & MALAD LLP

Attorneys for Intervenor

_____ PARTIES APPEARED IN PERSON/BY COUNSEL ON
FOR A PRETRIAL/STATUS CONFERENCE.

 X _____ APPROVED AS SUBMITTED.

_____ APPROVED AS AMENDED.

_____ APPROVED AS AMENDED PER SEPARATE ORDER.

_____ APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

_____ APPROVED, BUT THE DEADLINES SET IN SECTION(S)
_____ OF THE PLAN IS/ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

_____ THIS MATTER IS SET FOR TRIAL BY _____ ON
_____. FINAL PRETRIAL
CONFERENCE IS SCHEDULED FOR
_____ AT _____ .M.,
ROOM _____.

_____ A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE
FOR _____ AT _____ .M. COUNSEL SHALL
APPEAR:

_____ IN PERSON IN ROOM _____; OR

_____ BY TELEPHONE, WITH COUNSEL FOR
INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING
THE COURT JUDGE AT (____) _____; OR

_____ BY TELEPHONE, WITH COUNSEL CALLING THE
JUDGE'S STAFF AT (____) _____; OR

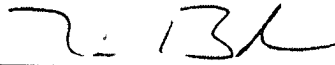
 X _____ DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN 3/28/11.

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

Approved and So Ordered.

06/01/2010

Date

A handwritten signature in black ink, appearing to read 'T. Baker', written over a horizontal line.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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